

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: June 27, 2006

DEPT. 71

REPORTER A:

CSR#

PRESENT HON. RONALD S. PRAGER

REPORTER B:

CSR#

JUDGE

CLERK: K. Sandoval

BAILIFF:

REPORTER'S ADDRESS: P.O. BOX 120128

SAN DIEGO, CA 92112-4104

MINUTE ORDER

IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)

The attached Court's ruling regarding **AQUILA MOTION TO QUASH** applies to all cases listed as follows:

4221-00020	UYEDA vs CENTERPOINT ENERGY INC
4221-00021	BENSCHIEDT vs AEP ENERGY SERVICES INC
4221-00022	COUNTY OF SANTA CLARA vs SEMPRA ENERGY
4221-00023	CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY
4221-00024	COUNTY OF SAN DIEGO vs SEMPRA ENERGY
4221-00025	OLDER vs SEMPRA ENERGY
4221-00026	CITY OF SAN DIEGO vs SEMPRA ENERGY
4221-00027	TAMCO vs DYNEGY INC
4221-00028	A L GILBERT COMPANY vs CORAL ENERGY RESOURCES LP
4221-00029	OBERTI WHOLESALE FOOD INC vs ENCANA ENERGY SERVICES INC
4221-00030	BROWN vs ENCANA ENERGY SERVICES INC
4221-00031	LOIS THE PIE QUEEN vs ENCANA ENERGY SERVICES INC
4221-00032	VITTICE CORPORATION vs ENCANA CORPORATION
4221-00033	COUNTY OF ALAMEDA vs SEMPRA ENERGY
4221-00034	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC
4221-00035	SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY
4221-00036	ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY
4221-00037	OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY
4221-00038	TEAM DESIGN DBA TIMOTHY ENGELN INC vs RELIANT ENERGY INC
4221-00039	CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC
4221-00040	SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC
4221-00041	SHANGHAI 1930 RESTAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC
4221-00042	PODESTA vs ENCANA ENERGY SERVICES INC
4221-00043	NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY

4221-00044 COUNTY OF SAN MATEO vs SEMPRA ENERGY
4221-00045 BUSTAMANTE vs WILLIAMS ENERGY SERVICES
4221-00046 PABCO BUILDING PRODUCTS vs DYNEGY INC
4221-00047 BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC

The Motion of Specially Appearing Defendant Aquila, Inc. to Quash Service of Summons on the Basis of Lack of Personal Jurisdiction is DENIED. (CCP section 410.10)

"A state court's assertion of personal jurisdiction over a nonresident defendant not served with process in California comports with federal due process if the defendant had such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." (*In re Automobile Antitrust Cases I & II* (2005)135 Cal. App. 4th 100, 107, citing, *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316) "A nonresident must have fair warning that a particular activity may subject it to jurisdiction in this state." (*In re Automobile Antitrust Cases I & II* (2005)135 Cal. App. 4th 100, 107, citing, *Vons*, 14 Cal.4th at pp. 446-447) As a matter of fairness, federal constitutional principles prohibit a nonresident defendant from being brought before a California court as the result of random, fortuitous or attenuated contacts or because of the unilateral activity of a third party. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 474-475)

Although the specially appearing defendant is the moving party, the plaintiff must carry the initial burden of demonstrating facts by a preponderance of evidence justifying the exercise of jurisdiction in California. (*In re Automobile Antitrust Cases I & II* (2005)135 Cal. App. 4th 100, 110, citing *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062) Once the plaintiff satisfies the initial burden of proof of showing a defendant's minimum contacts in California, the burden shifts to the defendant to present a compelling case demonstrating that the exercise of jurisdiction by our courts would be unreasonable. (*In re Automobile Antitrust Cases I & II* (2005)135 Cal. App. 4th 100, 110, citing *Snowney, supra*, 35 Cal.4th at p. 1062)

In opposition to Aquila's motion, Plaintiffs submit various evidence. The most pertinent evidence submitted by Plaintiffs shows: (1) contracts for services between Utilicorp United, Inc. (Aquila's predecessor, see Plaintiffs' Ex. 11) and Sacramento Municipal Utility District (SMUD) (Plaintiffs' Exs. 1-3); (2) Aquila, Inc. had contacts with California through various transactions; (a) as Utilicorp it insured property in Stockton, California (Plaintiffs' Exs. 20-23); (b) a commissioner of the CPUC was concerned about the down grading of Aquila, Inc. credit rating and the sale of gas storage facility because it "will limit Aquila, Inc.'s ability to provide financial resources or management expertise in Lodi Gas Storage" (Plaintiffs' Ex. 24); (c) Aquila, Inc.'s 10-Ks filed with the Securities and Exchange Commission list California properties that Aquila owns. (Plaintiffs' Exs. 14-17) and (d) Aquila, Inc. and Utilicorp participated in CPUC hearings. (Plaintiffs' Exs. 5-10; 24)

Aquila adamantly refutes these allegations by insisting that it has absolutely no contact with California, it has no physical presence in California and it has not purposefully availed itself of the benefits of doing business in California. Aquila offers no evidence, however, to refute Plaintiffs' assertions or to sustain its shifted burden to show a compelling case demonstrating that the exercise of jurisdiction here would be unreasonable. Instead Aquila attacks the admissibility of the evidence presented by Plaintiffs, which is Aquila's right, since Plaintiffs have the burden to establish jurisdiction is proper in California. Nonetheless, the absence of persuasive argument and evidence in rebuttal from Aquila is notable.

Aquila filed an "Opposition of Aquila, Inc., Appearing Specially, to Plaintiffs Request for Judicial Notice." Aquila asserts that Plaintiffs' Request for Judicial Notice contained unauthenticated documents which are not a matter of common knowledge, and cannot be verified by reference to statute, court file, or treatise. Aquila asserts, the Court is therefore, not authorized to take judicial notice of these documents under the Evidence Code. The Court disagrees.

Plaintiffs argue persuasively in support of the Court taking judicial notice of the documents. Plaintiffs correctly point out that the purpose of judicial notice is to recognize the existence of a matter of law or fact without the necessity of formal proof. (Evidence Code section 450 et. seq., *see Gravert v. Deluse* (1970) 6 Cal.App.3d 576,580) Here, the contracts with SMUD are "not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evidence Code section 452(h).) The contracts are between Plaintiffs SMUD and Aquila's predecessor, Utilicorp.. Plaintiffs argue the Court may determine that these documents are accurate simply by looking at Aquila's Motion to Seal Documents and the accompanying declaration of Seth W. Wiener. The Court agrees. Mr. Wiener's declaration asserts Aquila produced these documents in other litigation and they are "protected material" subject to a protective order. Under these circumstances, the Court grants Plaintiffs request for judicial notice and overrules Aquila's objections in this regard. Since, these documents have essentially been "self-authenticated" by Aquila and the statements made by Mr. Wiener, the Court concludes the contracts do indeed constitute matter "not reasonably subject to dispute."

Plaintiffs also accurately argue that the decisions of the CPUC are documents not reasonably subject to dispute and are properly admitted to show Aquila has contacts in California. As such, the Court grants Plaintiffs' request for judicial notice and denies Aquila's objections in this regard as to Exs. 5-10 and 24.

Similarly, the Court grants Plaintiffs' request for judicial notice of Exs. 14-17, Aquila's SEC filings. Again, as are the CPUC decisions, the SEC filings are not reasonably subject to dispute and are properly admitted to show Aquila has contacts in California. These documents are not subject to dispute and are capable of immediate and accurate determination as the proxy statements may be accessed by anyone visiting the SEC's website.

The insurance policies at Exs. 20-23, which were filed under seal at Aquila's request, are policies procured by Utilicorp for Stockton Cogen Company, a California corporation and Aquila and various companies. Again, these documents are self-authenticated by Aquila in that they are designated "protected material" submitted by Aquila during discovery. Based on Aquila's request to seal these documents, the documents are "not reasonably subject to dispute." Thus, the Court grants Plaintiffs' request for judicial notice of these documents and overrules Aquila's objections to the same.

Finally, Aquila asserts it has insufficient control and participation in the operation of AMS to satisfy the Representative Services Doctrine. However, the Court need not address the Representative Services Doctrine because the evidence herein submitted and discussed is sufficient to establish Aquila has the requisite minimum contacts with California so that exercising jurisdiction over it does not offend the concept of fair play and substantial justice. Based on the SMUD contracts alone, the Court would deny the motion to quash. The SMUD contracts establish, Aquila intended to benefit from its relationship with SMUD – and California energy consumers. The CPUC decisions, the SEC filings, and the insurance policies further document Aquila's intent to

interject itself into California commerce and benefit from the forum. In light of California's policy to authorize the broad exercise of jurisdiction, the evidence presented supports this policy since there is no violation of Aquila's rights to due process and Aquila was on reasonable notice that it may be hauled into Court in California based on its activities within the state.

The Court hereby grants Plaintiffs' Request for Judicial Notice and Overrules Aquila's objections to the same. The Court opts to deny the parties' requests to seal the various documents, and instead, will return the documents lodged with the Court so these documents will not become part of the Court's permanent file. Aquila is directed to file its Responsive pleading within 30 days.